

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0307

In re: La Merced Produce, LLC,

Respondent

Default Decision and Order

Preliminary Statement

This is a disciplinary proceeding brought pursuant to the provisions of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (PACA), the Regulations promulgated pursuant to the PACA (7 C.F.R. §§ 46.1 through 46.45), and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130 through 1.151).

Complainant, Fruit and Vegetable Program, Agricultural Marketing Service, initiated this proceeding against La Merced Produce, LLC (Respondent) by filing a disciplinary Complaint on July 31, 2013, alleging that Respondent willfully violated section 2(4) of the PACA (7 U.S.C. § 499b(4)) during the period of June of 2008 through July of 2012 by failing to make full payment promptly to 13 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$4,351,483.64 for 391 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce. The Complaint requested that an Administrative Law Judge find that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the PACA (7 U.S.C. § 499b(4)), and order that the facts and circumstances of those violations be published.

Respondent failed to answer the Complaint and the time for filing an answer having run, upon the motion of Complainant for the issuance of a Decision without Hearing by Reason of Default, the following Findings of Fact, Conclusions of Law and Order will be entered pursuant to section 1.139 (7 C.F.R. § 1.139) of the Rules of Practice.

Findings of Fact

1. La Merced Produce, LLC (Respondent) was incorporated and existed under the laws of the state of Georgia with a business and mailing address in Birmingham, Alabama.
2. At all times material herein, Respondent was licensed under the provisions of the PACA. License No. 20050755 was issued to Respondent on May 12, 2005. This license terminated on May 12, 2013, pursuant to section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required annual renewal fee.
3. Respondent, during the period of June of 2008 through July of 2012 failed to make full payment promptly to 13 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$4,351,483.64 for 391 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of or in contemplation of interstate and foreign commerce.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Respondent willfully, flagrantly and repeatedly violated section 2(4) of the PACA (7 U.S.C. § 499b(4)).

Order

1. The facts and circumstances of the violations shall be published.

2. This Decision will become final without further proceeding 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies of this Decision and Order shall be served upon the parties.

April 25, 2014

Peter M. Davenport

Peter M Davenport
Chief Administrative Law Judge